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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DIMITAR V. BARONOV, EVAN J. BUTLER, JESSE M. LOCK, and MICHAEL F. MCMANUS

Appeal 2016-005663[1]
Application 13/826,441[2]
Technology Center 3600

Before KENNETH G. SCHOPFER, TARA L. HUTCHINGS, and MATTHEW S. MEYERS, *Administrative Patent Judges*.

SCHOPFER, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of the decision entered October 20, 2017 ("Decision"), which affirmed the Examiner's rejection of claims 1, 2, 4, 6–11, 13, 14, 16–19, 26, 28, and 31 as directed to ineligible subject matter

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[1] Our decision references the Appellants' Request for Rehearing ("Req. Reh'g," filed Dec. 20, 2017), Appeal Brief ("Appeal Br.," filed Oct. 5, 2015) and Reply Brief ("Reply Br.," filed May 4, 2016), and the Examiner's Answer ("Ans.," mailed Mar. 4, 2016) and Final Office Action ("Final Act.," mailed Nov. 12, 2014). The record includes a transcript of the oral hearing held September 21, 2017.

[2] According to Appellants, the real party in interest is Etiometry Inc. Appeal Br. 3.

under 35 U.S.C. § 101. Appellants contend that we misapprehended or overlooked several points of law or fact related to our analysis under *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014). Req. Reh'g 4. We find no point of law or fact that we overlooked or misapprehended in arriving at our Decision.

DISCUSSION

Appellants raise several issues related to our application of the two-step *Alice* framework in the Decision. We address each in turn below.

First, Appellants assert that we gave only superficial treatment to the limitations of the claims in characterizing the claims with respect to *Alice* step one, and, Appellants assert that we "failed to produce a record sufficient to enable a court to conduct a meaningful review of how the Board reached its conclusions." Req. Reh'g 5–10. Thus, Appellants contend that we erred in "overlooking the language of the claims and the requirements of [Federal Circuit precedent and] failed to identify any limitation in the claims to support [our] conclusions that the claims are directed to the alleged abstract idea[s]" set forth in the Decision. *Id.* We disagree that the Decision overlooks any language in the claim in arriving at the conclusion that claim 1 is directed to an abstract idea. Rather, we characterized each step of the claim in arriving at our Decision. Specifically, the Decision discusses that "claim 1 generates probability densities based on the formula provided in the claim, measures physiological data, and uses the probability densities and measured data to generate probability densities based on another mathematical relationship (Bayes theorem)" and that the results are used to generate "probabilities of a possible patient state." Decision 7.

Second, Appellants argue that the Decision inaccurately describes or oversimplifies the claims in addressing *Alice* step one. Req. Reh'g 10–14.

In support, Appellants first assert that the Decision oversimplifies the claims by stating they are directed to predicting health risks and providing diagnosis. However, our Decision addresses this concern, stating:

> To the extent Appellants assert that the claims do not embody a prediction of patient health risks and diagnoses, but rather are directed to generating probabilities of a possible patient state (see App. Br. 30), this distinction fails to apprise us of Examiner error. At the end of the day, both concepts take physiological data from the patient and provide a probability of the patient's health status.

Decision 7. Similarly, Appellants assert that the Decision mischaracterizes the claims as related to providing "a probability of the patient's health status." Req. Reh'g 11. However, Appellants do not persuade us of any meaningful distinction between "the patient's health status" as used in the Decision and "patient states" used in the claim.

Next, Appellants assert that the Decision oversimplifies the claims by stating they are directed to a mathematical formula or relationship and ignores the transformation of data required by the claim. *Id.* at 11–12. Further, Appellants find fault in the Decision's various descriptions of the alleged abstract idea. *Id.* at 12–13. However, we find these arguments unpersuasive for the reasons provided above, i.e. because the Decision addresses each of the claim limitations in arriving at the conclusion regarding *Alice* step one. Furthermore, we note that the discussion of the claims at various levels of abstraction is not inconsistent with precedent. *See Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240–41 (Fed. Cir. 2016) ("An abstract idea can generally be described at different levels of abstraction,"

and "[t]he Board's slight revision of its abstract idea analysis does not impact the patentability analysis.")

Third, Appellants argue that the Decision does not consider the claims at the level required by our precedent and that doing so would show that the claims define a transformation. Req. Reh'g 14. Appellants assert that the claims define a transformation of raw measured physiological data into "meta-information that cannot be measured" in the form of patient state data. *Id.* Appellants further assert that "[s]uch a transformation transcends ordinary computer processing of data . . . constituting an improvement in the operation of computers, and accordingly the subject matter is patent eligible." *Id.* at 14–15. We disagree that the analysis and conclusions in the Decision are inconsistent with precedent. Rather, the transformation of data alone is not sufficient to show that the claims are eligible, and Appellants do not adequately explain how the transformation here is an improvement in the operation of the computer or something that is not within the capacity of the human mind to perform.

Finally, Appellants argue with respect to *Alice* step two that the transformation of data into possible patient states, each with its own probability, and performed at successive moments in time amounts to significantly more than the alleged abstract ideas presented in the Decision. Req. Reh'g 16. More specifically, Appellants assert that the Decision misapplied precedent in finding the claims analogous to those found ineligible in *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016). *Id.* at 17. Rather, Appellants assert that the claims are more similar to those found eligible in *DDR Holdings, LLC v. Hotels.com*, 773 F.3d 1245 (Fed. Cir. 2014). We are not persuaded of any error of law or fact in the

Decision by this argument. In particular, we are not persuaded that the claims here are similar to the claims found eligible in *DDR Holdings*. The claims in *DDR Holdings* were found eligible because "the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *DDR Holdings*, 773 F.3d at 1257. In contrast, Appellants' claims do not appear to be related to any specific problem arising in the realm of computer networks and only use computers as a tool for deriving probabilities for patient states.

CONCLUSION

We have carefully reviewed the original Decision in light of Appellants' request, but we find no point of law or fact that we overlooked or misapprehended in arriving at our decision. Therefore, Appellants' request for rehearing is denied.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

DENIED